



POLICE DEPARTMENT

April 16, 2012

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Daniel Shirreffs
Tax Registry No. 918327
Highway District
Disciplinary Case No. 2011-4683

The above-named member of the Department appeared before me on December 22, 2011, charged with the following:

1. Said Police Officer Donald¹ Shirreffs, while off duty and assigned to the Highway Accident Investigation Squad, on or about February 27, 2011, did fail and neglect to properly safeguard his firearm, to wit: said Police Officer did leave his Smith and Wesson revolver in his parents' house. (*As amended*)

P.G. 204-08, Page 2, Paragraph 7 – FIREARM GENERAL REGULATIONS
UNIFORM AND EQUIPMENT

The Department was represented by Pamela Naples, Esq., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty.

¹ As spelled in charges. Respondent's name is "Daniel."

SUMMARY OF EVIDENCE PRESENTEDIntroduction

It is not disputed that on February 27, 2011, while he was off duty, Respondent, who was assigned to the Highway Accident Investigation Squad (HAIS), had a verbal dispute with his [REDACTED] inside the house where they resided together [REDACTED]. His [REDACTED] called 911 and police officers responded to the house. Respondent consented to the non-disciplinary removal of all of his firearms. Respondent owned five firearms including a Smith and Wesson revolver.

The Department's Case

The Department called Sergeant Michael Salice, Captain Theofanis Papadopoulos, and Sergeant Gregory Contino as witnesses.

Sergeant Michael Salice

Sergeant Salice, assigned to the 104 Precinct, recalled that on February 27, 2011, he was on duty assigned as patrol supervisor when he responded to Respondent's residence [REDACTED], as a result of the 911 call. Sergeant Salice contacted the duty captain who directed him to take possession of Respondent's firearms and to tell Respondent to report to the 104 Precinct. Sergeant Salice asked Respondent how many firearms he owned. Sergeant Salice testified, "I believe he said at first he had three here and two at his command." Sergeant Salice testified that Respondent handed over three firearms that were inside his residence. After they arrived at the 104 Precinct, Sergeant Salice had no further involvement in retrieving Respondent's other two firearms.

On cross-examination, Sergeant Salice agreed that when he arrived at Respondent's residence he interviewed his [REDACTED] who stated that she and Respondent had engaged in a verbal dispute which did not involve any physicality. Sergeant Salice further agreed that Respondent complied with his request by handing over the three firearms that were inside his residence.

Captain Theofanis Papadopoulos

Captain Papadopoulos, who is assigned to the Communications Section, recalled that on February 27, 2011, he was on duty assigned as the duty captain for [REDACTED] North and that after Sergeant Salice contacted him he responded to the 104 Precinct where he interviewed Sergeant Salice, Respondent, and Respondent's [REDACTED] Captain Papadopoulos then determined that it would be in "the best interest" that all Respondent's firearms should be removed because Respondent had been involved in a domestic incident and "was under some stress." He recalled that he ascertained from Respondent's command that Respondent's "Force Record Card" showed that Respondent owned five firearms, but only four of Respondent's firearms had been removed. He had no recollection that he had issued any specific instructions to Respondent regarding the fifth firearm.

On cross-examination, he agreed that the removal of all of Respondent's firearms was non-disciplinary in nature and that his removal order was not issued because Respondent had committed any misconduct. He agreed that Respondent was compliant and that Respondent "didn't give me any problems." He had no further involvement with the removal of Respondent's firearms.

Sergeant Gregory Contino

Sergeant Contino, who is assigned to the Chief of Transportation's Investigations Unit, recalled that on February 27, 2011, he was called in and told to report to the 104 Precinct. When he arrived there, he recognized Respondent because they had worked together at the 101 Precinct. He met with the duty captain in an office and he was told that they were "contemplating doing" a non-disciplinary removal of all of Respondent's firearms and that one firearm was "missing." Sergeant Contino recalled that he left the office and asked Respondent "if he had any idea where that firearm may be if he would be able to account for it." Respondent mentioned that "it may be out at his parents' house [REDACTED]." Since Respondent was about to be allowed to leave the 104 Precinct, Respondent told him that he would immediately drive out to his parents' house. Sergeant Contino told Respondent to telephone him after he arrived at his parents' house and let him know whether he had the firearm. When Respondent telephoned him from his parents' house, about six hours later, and told him that he had his Smith and Wesson revolver, Sergeant Contino drove to Respondent's parents' house and Respondent handed him the firearm. The drive from Chambers Street, Manhattan to Respondent's parents' house was about 60 miles and took Sergeant Contino about an hour and a half. Sergeant Contino estimated that the distance between Respondent's residence [REDACTED] and his parents' house [REDACTED] is about 50 miles.

On April 15, 2011, Sergeant Contino conducted an official Department interview of Respondent at which he stated that he had stored his Smith and Wesson revolver inside a small locked box at his parents' house, that he was the only person who possessed the

keys that could open the lock on this box, that he sometimes took his Smith and Wesson revolver out of his parents' house to a shooting range in Calverton, Suffolk County, and that there were no pistol permit holders in his parents' house.

On cross-examination, he agreed that because the removal of all of Respondent's firearms was for a non-disciplinary purpose, he did not feel that there was any need for him to go with Respondent when he drove to his parents' house. When he arrived at Respondent's parents' house, Respondent handed a Smith and Wesson revolver to him in the kitchen of his parents' home. He confirmed that he did not ask Respondent to show him where he had been storing this firearm.

Respondent's Case

Respondent testified on his own behalf.

Respondent

Respondent testified that his Smith and Wesson revolver was his former service firearm until he was required to carry a .9 millimeter Glock automatic firearm as his on duty service firearm. On February 27, 2011, he immediately turned over three firearms that he kept inside his house after he was requested to do so. He then telephoned Highway District 3 in Queens and provided a uniformed member there with the combination number to the lock on his locker so that his locker could be opened. After his locker was opened, he was informed that one firearm was found inside his locker.

Respondent testified that he told Sergeant Contino that since there were only three places where he stored his firearms: inside his house, inside his locker, and inside his

parents' house [REDACTED], his fifth firearm, a Smith and Wesson revolver, was at his parents' house. He told Sergeant Contino that he would drive to his parents' house, pick up his Smith and Wesson revolver and then call him. Respondent made the 50 mile drive from his residence [REDACTED] to his parents' house, went to a closet in the basement, retrieved the locked storage box, unlocked the box with one of the two keys that only he possessed, removed his Smith and Wesson revolver, and called Sergeant Contino to come and pick up the firearm. Respondent testified that he often stayed at his parents' house and that he sometimes took his Smith and Wesson revolver to a shooting range in Calverton, Suffolk County.

On cross-examination, he agreed that he does not drive to his parents' house [REDACTED] every day and that when he visits his parents' at their house he sometimes, but not always, takes his Smith and Wesson revolver to the shooting range in Suffolk County.

FINDINGS AND ANALYSIS

It is charged that on February 27, 2011, Respondent failed and neglected to properly safeguard his firearm in that he "did leave his Smith and Wesson revolver in his parents' house."

Very few facts regarding this matter are in dispute. It is not disputed that Respondent cooperated in the non disciplinary removal of all five of the firearms he owned. It is also not disputed that three of these firearms were inside Respondent's residence and that a fourth was inside his locker at his command. There is no allegation that any of these four firearms were improperly safeguarded. Finally, it is not disputed

that Respondent handed his Smith and Wesson revolver to Sergeant Contino when he arrived at Respondent's parents' house and that Sergeant Contino did not request that Respondent show him where he had been storing this firearm.

The Department offered no evidence at this trial to refute Respondent's testimony that he stored his Smith and Wesson revolver inside a locked box and that he was the only person who possessed a key that could open the lock on this box. Rather, the Assistant Department Advocate (the Advocate) proffered two theories as to why Respondent should, nonetheless, be found guilty of having failed to properly safeguard this firearm: Firstly, the Advocate argued that Respondent's act of storing his Smith and Wesson at his parents' house in itself constituted a failure to properly safeguard this firearm; and, secondly, the Advocate argued that the statements that Respondent made to Sergeant Contino prove that Respondent did not know where his Smith and Wesson revolver was located. I will analyze these theories separately.

With regard to the Advocate's argument that merely by storing his Smith and Wesson revolver at his parents' house Respondent failed to properly safeguard this firearm, it must be noted that Patrol Guide Procedure 204-08(7) does not prohibit a member from storing a firearm at a location other than the member's residence or locker. Also, I reject the Advocate's argument that Respondent's action of storing his Smith and Wesson revolver inside a closet in a locked box, which his parents could not open without the key that Respondent possessed, is analogous to situations where a member

has allowed a civilian to handle the member's firearm² or to situations where a member has stored his firearm inside an unlocked container placed inside a closet.³

In support of her argument that by storing his Smith and Wesson at his parents' house Respondent relinquished control of this firearm, the Advocate cited a prior disciplinary case⁴ where a member pleaded guilty to failing to properly safeguard his firearm. However, in that case, the member left his Smith and Wesson revolver at his girlfriend's house in Florida for over a year. In contrast to the facts in that case, here Respondent stored his Smith and Wesson revolver at a location that was only 50 miles from his residence and his work location and within the State of New York. Moreover, the Advocate offered no evidence to refute Respondent's testimony that he often stayed at his parents' house and that he sometimes took his Smith and Wesson revolver to a shooting range in Suffolk County.

The Advocate also cited a prior disciplinary case⁵ where a member left his firearm at his girlfriend's residence even though he was not living with her. However, in that case, unlike here, the member's firearm was stolen. Also, since the member in that case pleaded guilty and accepted a 15 day penalty, the question of whether storing a firearm inside a locked safe which is bolted to the floor constitutes proper safeguarding was never addressed.

² See Case No. 82386/06 (signed on Nov. 10, 2008).

³ See Case No. 83763/08 (signed on Sept. 16, 2009).

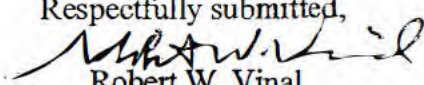
⁴ Case No. 78706/03 (signed on Aug. 11, 2003).

⁵ Case No. 80973/05 (signed on Aug. 23, 2005).

I will now analyze the Advocate's second theory as to why Respondent should be found guilty of having failed to properly safeguard his Smith and Wesson revolver. The Advocate argued that the Department proved that at the point in time when Respondent consented to the non-disciplinary removal of all of his firearms, he did not know where his Smith and Wesson revolver was. The Advocate asserted that Sergeant Contino's testimony regarding the statements that Respondent made to him establish that Respondent did not know where his Smith and Wesson revolver was located. However, a close examination of Sergeant Contino's testimony regarding what Respondent said to him about his Smith and Wesson revolver shows that Sergeant Contino never asserted that Respondent had stated that he had no idea where his Smith and Wesson revolver was located. Rather, Sergeant Contino testified that when he asked Respondent "if he had any idea where that firearm may be if he would be able to account for it," that Respondent, in substance, told him that "it may be out at his parents' house [REDACTED]" which is where Respondent presented the firearm to Sergeant Contino.

Since Sergeant Contino's testimony regarding what Respondent said to him does not establish that Respondent had no idea where his Smith and Wesson revolver was, I reject the Advocate's contention that the record sufficiently establishes that Respondent did not know where his Smith and Wesson revolver was and could not account for this firearm. On the contrary, the record shows that he drove to the location where he had stored this firearm, retrieved it, and presented it to Sergeant Contino.

Respondent is found Not Guilty.

Respectfully submitted,

Robert W. Vinal
Assistant Deputy Commissioner - Trials

APPROVED

OCT 22 2012
RAYMOND W. KELLY
POLICE COMMISSIONER